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LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109			MOONEYHAM, JANICE A	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,257

Applicant(s)

TOLIS ET AL.

Examiner

Janice A. Mooneyham

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-29 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to the applicant's communication filed on April 13, 2006, wherein:

Claims 1-29 are pending;

Claims 1 and 7 have been amended;

Claims 27-29 have been added.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant is claiming a computerized system for making customer reservations. How does this system would work for all reservations, for example, airline flights, or car reservations, hotel rooms, theater tickets, etc.? What would the blocks represent and how would they be divided for reservations other than restaurant reservations?

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3629

3. Claims 7-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what the applicant is intending to claim in claims 7-26. The applicant states in the preamble that the invention is directed to a computerized reservation system. However, the applicant has not positively claimed any structure but instead appears to be defining a computer readable medium.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1, 5 and 7-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1 and 5 are rejected under 35 U.S.C. 101 under MPEP section 2105.

MPEP Section 2105 states:

If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter. Furthermore, the claimed invention must be examined with regard to all issues pertinent to patentability, and any applicable rejections under 35 U.S.C. 102, 103, or 112 must also be made.

Claims 1 and 5 identify one or more individual service providers having a computing system executing computer software through which reservations for the respective individual service providers may be made directly and a central reservation

Art Unit: 3629

provider having a computing system executing computer software to make a reservation. When these terms are given the broadest reasonable interpretation, the one or more individual service providers and the central reservation provider could encompass human beings which have computing systems. As for claim 5, the means for automatically activating the links for communicating between the central reservation provider and the individual service providers could be human beings making telephone calls.

5. Claims 7 and 29 are directed to a system comprising computer readable instructions.

MPEP Section 2106 B (1) states:

1. Nonstatutory Subject Matter

Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute "descriptive material." Abstract ideas, *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, *Schrader*, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." *The New IEEE Standard Dictionary of Electrical and Electronics Terms* 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data. Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se. *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.

Art Unit: 3629

(a) Functional Descriptive Material: "Data Structures" Representing Descriptive Material Per Se or Computer Programs Representing Computer Listings Per Se

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claims 8-26 depend on Claim 7.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Mankes (US 6,477, 503) (hereinafter referred to as Mankes).

Referring to Claim 1:

Manes discloses a computerized system for making customer reservations, the system comprising:

Art Unit: 3629

one or more individual service providers having a computing system executing computer software through which reservations of fungible items for the respective individual service providers may be made directly (event owners, Figures 1, 3, 8, and 12);

a central reservation provider having a computing system executing computer software through which reservations of fungible items for any of the one or more individual service providers may be made (ARS, Figure 1 (16));

a link for communicating between the central reservation provider computer system and the respective individual service providers' computer systems (Figure 1 (20)), wherein a first portion of the available reservations from each individual service provider are held by the central reservation provider and a second portion of the available reservations from each individual service provider are held by that respective individual service provider (col. 2, line 65 thru col. 3, line 1 once inventory is sold through one of many networked affiliations, a local transaction removes the item from available inventory both on-site and off-site; col. 3, lines 27-29 the local server allocates a portion of the inventory as reservation server inventory and transfers such data to the reservation server), and when a reservation of fungible items requested from either the central reservation provider or an individual service provider is not available from that provider or when the portion of available reservations held by either the computing system of the central reservation provider or the computing system of the individual service provider drops below a predefined minimum level at any time, the link between the central reservation provider and the individual service provider is activated by one of

Art Unit: 3629

the computer systems of central reservation provider and individual services providers and available reservations are transferred via the communication link to allow a reservation of fungible items to be made (col. 6, lines 4-32 the local owner would establish a local allocation, keeping in mind that the present system accommodates ongoing revision thereof in response to local and remote conditions) and when a reservation request is from one of the central reservation provider or one of the individual service providers is available from that provider, the reservation of fungible items is made by that provider without communicating with the other providers (col. 7, lines 15-18 should the connection to the active reservation server be lost, the local event server 12 has the capability to continue to operate. This allows the owners to continue to sell) (Figures 1, 2, col. 2, line 65 thru col. 3, line 42, col. 4, lines 23-61, col. 6, lines 30-33 the present system accommodates ongoing revision in response to local and remote conditions.

Referring to Claim 2:

Mankes discloses wherein the central reservation provider is an Internet booking service (Figure 1 (24), col. 4, lines 35-49; col. 5, lines 9-11 Referring to Fig. 4, the ARS 16 comprises a computer system 40 communicating with the EOS through an Internet connection).

Referring to Claim 3:

Mankes discloses wherein the individual service provider users computer software for communicating automatically with the Internet booking service (Figures 1 and 4, col. 4, lines 35-48 and col. 5, lines 1-4 and lines 9-25 EOS 12 may comprise

Art Unit: 3629

commercially available computer and software adjuncts use in conjunction with reserving and maintain an inventory for such goods and services and for accessing the Internet).

Referring to Claim 4:

Mankes discloses wherein the reservation system is installed over a local area network (col. 3, lines 6-29 local event owner server).

Referring to Claim 5:

Mankes discloses wherein the system comprises means for automatically activating the link for communicating between the central reservation provider and individual service providers at regular intervals to transfer available reservations between providers (Figure 2, Figure 7, col. 6, lines 4-44, col. 7, lines 47-67, Referring to Fig. 9, the event owner server periodically polls the ARS on a predetermined schedule).

7. Claims 7-11 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Glazer et al (US 2002/0032588) (hereinafter referred to as Glazer).

Referring to Claims 7 and 29:

Glazer discloses a computerized reservation system for reserving one or more time specific blocks of a plurality of fungible items, the computer reservation system comprising computer readable medium with instructions that when executed on a computing system cause a processor of the computerized reservation system to divide the time period availability of each item into time consecutive blocks of a predetermined duration so as to provide a plurality of sets of the blocks representing the total

Art Unit: 3629

availability of the plurality of fungible items within the time period of availability, wherein the system accepts a reservation request if at least one time consecutive block is available for each part of the time period for which the reservation is requested such that time consecutive blocks relating to more than one of the fungible items may be combined to provide the reservation Figure 2, page 1 [0012], page 2 [0016], page 4 [0027]).

Referring to Claim 8:

Glazer discloses a database for storing data defining the numbers and types of items available for reservation together with details of any reservations made (page 2 [0014]) ; and

means for calculating the number of available blocks using the data from the database each time that a reservation is requested (page 2 [0014][0016], Figure 2).

Referring to Claim 9:

Glazer discloses wherein the system is for reserving a plurality types of item and the blocks are tagged to indicate the type of item to which they refer (page 1 [0008], page 2 [0014-0016], page 3 [0019]).

Referring to Claim 10:

Glazer discloses wherein a reservation is only made if at least one consecutive block relating to the type of item required is available for each consecutive part of the time period for which the reservation is required (page 1 [0008], page 2 [0014-0016], Figure 2).

Referring to Claim 11:

Glazer discloses wherein the system is for making restaurant reservations and the blocks are of 15 minute duration (Figure 2, [0008], [0014-0016] and [0027].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mankes as applied to claim 1 above, and further in view of Rapp et al (US 2002/0116232) (hereinafter referred to as Rapp).

1. Mankes discloses the system of claim 1. Mankes does not disclose a reservation system further comprising the service providers allowing a reservation to be made for a plurality of items from available reservations, in which the time period of availability of each item is divided into consecutive blocks of a predetermined duration so as to provide a plurality of sets of said consecutive blocks representing the total availability of the plurality of items within the time period, wherein reservation request is accepted if at least one consecutive block is available for each part of the time period for which the reservation is required such that blocks relating to more than one of the items may be combined to provide the reservation.

Art Unit: 3629

2. However, Rapp discloses a reservation system further comprising means for reserving one of a plurality of items from available reservations, in which the time period of availability of each item is divided into consecutive blocks of a predetermined duration so as to provide a plurality of sets of said consecutive blocks representing the total availability of items within the time period, wherein the system accepts reservation request if at least one consecutive block is available for each part of the time period for which the reservation is required such that blocks relating to more than one of the items may be combined to provide the reservation (Figs. 5-6, 12-15).

3. It would have been obvious to one of ordinary skill in the art to incorporate into the active reservation system disclosed in Mankes with the blocks of time taught in Rapp since the interactive scheduling system and method of Rapp allow vendors (restaurants) to manage their appointment books (reservations) in a convenient and cost-effective approach while allowing customers to go online and pick dates having the first available time slots and selecting from the available timeslots.

4. Claims 22-24 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glazer as applied to claim 7 above, and further in view of Mankes.

Referring to Claim 22:

Glazer discloses the system of Claim 7:

Glazer does not explicitly disclose a reservation system wherein blocks or sets of blocks of predetermined duration representing items available for reservation from an individual service provider are distributed between a central

reservation provider and the individual service provider such that reservations may be made through either of the individual service provider or the central reservation provider.

However, Mankes discloses a reservation system wherein blocks or sets of blocks of predetermined duration representing items available for reservation from an individual service provider are distributed between a central reservation provider and the individual service provider such that reservations may be made through either of the individual service provider or the central reservation provider (Fig. 1).

It would have been obvious to one of ordinary skill in the art to incorporate into the disclosure of Glazer the teachings of Mankes so that event vendors are allowed to maintain their current reservation practices and control their inventory while providing access to their inventory by anyone with Internet access.

Referring to Claim 23:

Mankes discloses a reservation system further comprising means for communicating between the central reservation provider and the individual service provider wherein if a reservation requested from either the central reservation provider or the individual service provider is not available from that provider, available blocks or sets of blocks are transferred from the other of the central reservation provider or the individual service provider to the central reservation provider or the individual service provider via the means for

Art Unit: 3629

communicating so as to allow a reservation to be made (Figs. 1,2, col. 2, line 65 thru col. 3, line 42, col. 4, lines 23-61, col. 6, lines 4-32).

Referring to Claim 24:

Mankes discloses a reservation system further comprising means for communicating between the central reservation provider and the individual service provider, wherein if the number of blocks or sets of blocks held by either the central reservation provider or the individual service provider falls below a predetermined minimum level at any time, available blocks are transferred from the other of the central reservation provider or the individual service provider to the central reservation provider or the individual service provider via the means for communicating (Figs. 1,2, col. 2, line 65 thru col. 3, line 42, col. 4, lines 23-61, col. 6, lines 4-32).

Referring to Claims 27 and 28:

Mankes discloses a central reservation provider and an individual service provider (Figures 1 and 7).

Allowable Subject Matter

5. It appears that claims 12-21 and 25-26 may be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st and 2nd paragraph, the rejection under 35 U.S.C. 101 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed April 13, 2006 have been fully considered but they are not persuasive.

Rejection under 35 USC Section 112, 1st paragraph:

The applicant has amended the claims to claim a computerized reservation system for making time-specific reservation of fungible items. As the Examiner understands the term "fungible" from the applicant's specification, the fungible items are blocks that can be combined with other blocks or combinable blocks. The Examiner asserts, that although the system may be enabled for table or seat reservations in a restaurant, the Examiner asserts that the invention is not enabled for all types of reservations. Thus, how does the invention work for airline reservations, or theater reservations?

Rejection under 35 USC Section 112, 2nd paragraph:

The Examiner has withdrawn the rejection as to claim 4. The Examiner maintains the rejection as to claims 7-26. Claim 7 does not positively claim structure. It appears to be directed to a medium. Claims 8-26 depend on claim 7.

Rejection under 35 USC Section 101:

The applicant is still claiming a service provider having a computing system. As stated above, this could be a human being and thus makes the claims non-statutory. Applicant may want to consider claiming the system as follows:

a plurality of computing systems located at a plurality of individual service providers;

a central reservation computer;
a communication link between the central reservation computer and the plurality of computing systems.....

Claims 1-5:

The applicant distinguishes his invention from Mankes stating that Mankes must communicate with the local server to receive confirmation availability and that reservations are only made thru the local server.

First, claims must be given their broadest reasonable interpretation consistent with the supporting description without reading limitations into the claims. The term communication link could be a telephone line and the providers could be communicating via a telephone. Secondly, the applicant states that the system *comprises* a link that is activated when there are no available reservations at one of the providers and the reservations are transferred. This does not preclude a system that is activated at other times. The applicant has not provided the necessary claim language to be able to limit the invention to one in which communication is activated *only* when there are no available reservations.

Furthermore, the applicant is arguing a limitation that was added in the amendment received on October 19, 2005. The Examiner is giving the claim language the broadest reasonable interpretation. The Examiner has cited a passage in Mankes wherein the reservation is made at the local site without communicating with the ARS (see discussion under the rejection).

Claims 7-11:

As for applicant's argument regarding Glazer, the Examiner respectfully disagrees. Glazer teaches consecutive blocks of predetermined duration wherein the system accepts the reservation if at least one time consecutive block is available. It is the Examiner's position that applicant's reservation blocks could be available appointment time blocks. As for fungible items, as discussed above, the Examiner is interpreting fungible items to be combinable blocks. Figure 2 shows combinable blocks.

Claim 6:

As for the applicant argument as to Rapp, the Examiner did not cite Rapp for the communication link but rather as a teaching of a reservation system which discloses consecutive blocks of a predetermined duration. Mankes in combination with Rapp disclose the applicant's invention as claimed in claim 6. Applicant is arguing the reference individually. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claims 22-24:

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

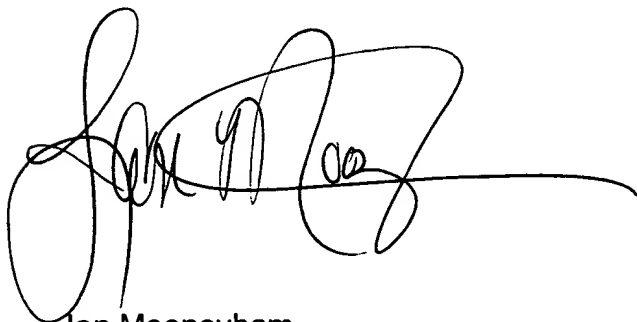
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janice A. Mooneyham whose telephone number is (571) 272-6805. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Jan Mooneyham', with a long horizontal line extending to the right.

Jan Mooneyham
Patent Examiner
Art Unit 3629